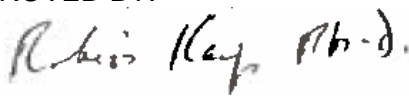




DEPARTMENT OF MENTAL HEALTH POLICY/PROCEDURE

SUBJECT REPORTING NAMED OR ALLEGED LICENSEES TO LICENSING BOARDS	POLICY NO. 303.07	EFFECTIVE DATE 05/16/2016	PAGE 1 of 7
APPROVED BY:  Acting Director	SUPERSEDES N/A	ORIGINAL ISSUE DATE 05/16/2016	DISTRIBUTION LEVEL(S) 1

PURPOSE

- 1.1 To establish, pursuant to California Business and Professions (B&P) Code Sections 801.01, et seq., a Los Angeles County Department of Mental Health (LACDMH) policy for reporting of settlements, judgments, and arbitration awards as a result of a claim for damages for death or personal injury caused by a licensee's negligence, error, or omission in practice or by the unauthorized rendering of professional services to applicable state agencies, when such settlements, judgments, and arbitration awards are over specified threshold amounts. (Authority 1)
- 1.2 To ensure that the full amount of a settlement of a claim for damages for death or personal injury caused by a licensee shall not be attributed to a named or alleged licensee when the facts of the case indicate that there are (i) other issues which indicate that the licensee is not fully responsible, (ii) systems issues, and/or (iii) economic reasons in the factors for settlement.
- 1.3 To define the process for reporting individual licensees to licensing boards and apportioning settlement costs to individual licensees.
- 1.4 To define related licensee notification process and appeal processes.
- 1.5 To ensure that settlement, judgments, and arbitration awards entered against or paid by the County and/or the LACDMH are reported in compliance with B&P Code Sections 801.01, et seq.

POLICY

- 2.1 Pursuant to the laws that govern mandatory malpractice reporting to the Medical Board of California found in B&P Code § 801.01, et seq., LACDMH shall report settlements exceeding reporting thresholds and all judgments or arbitration awards and apportion all settlements that are reported to any licensing board



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according to the statutorily required reportable limits for each licensing board; current limits as of the effective date of this policy are listed below:

- \$30,000 The Medical Board of California
- \$30,000 Osteopathic Medical Board of California
- \$10,000 Board of Behavioral Sciences
- \$10,000 Board of Psychology
- \$ 3,000 Board of Registered Nursing
- \$ 3,000 Board of Vocational Nursing and Psychiatric Technicians
- \$ 3,000 Board of Pharmacy

- 2.2 LACDMH shall ensure that the full amount of a settlement of a claim for damages for death or personal injury caused by a licensee shall not be attributed to a named or alleged licensee when the facts of the case indicate that there are (i) other issues which indicate that the licensee is not fully responsible, (ii) systems issues, and/or (iii) economic reasons in the factors for settlement.

PROCEDURE

- 3.1 Defense Counsel shall identify any named or alleged licensees employed by LACDMH subject to the reporting requirements under B&P Code § 801.01, et seq. and notify the LACDMH Clinical Risk Management (CRM) Office Manager or designee through the assigned County Counsel or the County's Third Party Claims Administrator (TPA).
- 3.2 County Counsel shall convene a meeting or meetings consisting of appropriate levels of staff and management to assist in evaluating the lawsuit.
- 3.2.1 The TPA shall prepare a letter of notification announcing the date of the meeting and the potential for reporting to the licensing board and mail that letter to the potential reportable licensee(s). (Attachment 1)
- 3.2.1.1 For alleged but not named licensees, the documentation, that is the basis for the allegation for the named licensee who has already been served, will be provided.



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- 3.2.1.2 In the event that subsequent to the meetings, additional licensees are identified by defense counsel as either named or alleged subject to the reporting requirements under B&P Code § 801.01, et seq., defense counsel will notify the TPA, and additional meeting(s) will be held with all potential invited reportees.
- 3.2.1.3 The degree of participation beyond the role of the potential reportable licensee shall be at the discretion of County Counsel.
- 3.2.2 All potentially reportable licensees shall be afforded the opportunity to meet with defense counsel assigned to represent the County and the licensee, prior to the meeting and throughout the process to discuss implications of the reporting requirements and to be apprised and advised of the process and procedures described in this policy.
- 3.2.2.1 In the event of a conflict affecting defense counsel's representation of the licensee and the County, as determined by County Counsel, a separate defense counsel may be assigned to represent the licensee.
- 3.2.3 At the meeting(s), County Counsel will be responsible for all decisions regarding settlement or trial where necessary and when settlement is decided the factors for settlement.
- 3.2.4 Attendees will provide input and discuss pertinent aspects of the case. An effort will be made at the meeting to obtain consensus on the decision to settle or go to trial. In addition, if a decision for settlement is determined, an effort will be made to obtain consensus on the factor(s) for settlement.
- 3.3 If the dollar amount of settlement meets a reporting threshold as described in Section 2.1 and there are licensees named or alleged subject to the reporting requirements under B&P Code § 801.01, et seq., CRM shall be notified by the TPA within twenty-four (24) hours of the settlement decision.



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- 3.4 In instances when the dollar amount of settlement meets a reporting threshold as described in Section 2.1 and there are licensees named or alleged subject to the reporting requirements under B&P Code § 801.01, et seq., if the factors for settlement are solely systems and/or economic issues, all of the licensees named or alleged will be apportioned 0% of the amount of settlement and will be notified by mail of the County's intent to report to the respective licensing board based on the mandatory reporting requirements. (Attachment 2)
- 3.5 In instances when the dollar amount of settlement meets a reporting threshold as described in Section 2.1 and there are licensees named or alleged subject to the reporting requirements under B&P Code § 801.01, et seq., if the factors for settlement were not economic and within ten (10) business days of the settlement decision, the TPA shall prepare a copy of the clinical record, a copy of the complaint(s), a copy of the County Counsel's determination on the factors for settlement, a copy of the relevant deposition summaries, a copy of the relevant deposition transcripts, and a copy of the Trial Counsel Report including the Final Summary of Potentially Reportable Licensees, taking care to exclude peer-review documents and send such documents to CRM who will forward them to the designated Program Manager. The designated Program Manager will have ten (10) business days to review the documents and to provide the role and specific activities of each reportable licensee related to the factor(s) for settlement and relevant clarifying or explanatory documents, if desired.
- 3.5.1 At the end of the ten (10) business day period, CRM will return the documents and any additional information provided by the Program Manager to the TPA to forward to the County's apportionment consultant, an independent contractor with both medical and legal credentials.
- 3.5.2 The consultant shall review the applicable documents and render his/her written opinion as to the apportionment of liability within ten (10) business days of receipt of applicable documents.
- 3.5.3 The consultant's written opinion shall be forwarded to CRM who will forward it to the Program Manager. If the Program Manager agrees with the apportionment recommendation (recommendation), CRM or the Program Manager shall notify each identified reportable licensee of the



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decision, including the total amount of the settlement and the amount attributed to each licensee. Notification may be in person, by correspondence with confirmation in writing, or by telephone including fax, secure email, letters, or certified mail to last known address. For apportionment recommendations greater than 0%, the Program Manager and licensee(s) shall have thirty (30) business days to review and respond to the decision. (Attachment 3)

- 3.5.4 If the Program Manager and licensee agree with a recommendation greater than 0% or does not dispute the recommendation greater than 0%, and, using the procedures in Section 3.5.5, the recommendation will be sent to CRM who will forward the decisions to the TPA. The amount of settlement apportioned to a potential reportable licensee, including zero, will be reported to the appropriate licensing board in accordance with B&P Code § 801.01, et seq. The TPA shall prepare the appropriate documents to report said licensees to their respective boards. A copy of the report shall be forwarded to CRM, the LACDMH Director/designee, the Program Manager and any licensees reported.
- 3.5.5 If the Program Manager or licensee does not agree with the apportionment recommendations greater than 0%, he/she will be afforded the opportunity to respond, in writing, and to provide additional clarifying information for dispute resolution as described below.
- 3.5.5.1 The licensee(s) and/or Program Manager shall have the opportunity to dispute the recommendation by providing written clarifying documentation no later than the end of the thirty (30) business days afforded for dispute resolution to CRM.
- 3.5.5.2 Immediately upon receipt, CRM shall provide the documents to the consultant, who will have five (5) business days to review the documents provided and modify the recommendation, if appropriate.
- 3.5.5.3 The consultant shall provide a final written recommendation at the end of this five (5) business day period or sooner to CRM.



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The consultant's final recommendation shall be forwarded to the Program Manager and TPA. CRM shall forward the final recommendation to each licensee.

- 3.5.5.4 If the Program Manager and/or licensee does not agree with the consultant's final recommendation, he/she will be afforded the opportunity to meet with the LACDMH Director/designee and to provide additional documents relevant to the apportionment decision, including explanations of systems issues to the LACDMH Director/designee within fifteen (15) business days of the licensee's receipt of the consultant's recommendation. The LACDMH Director/designee will make a determination within fifteen (15) business days and inform the licensee, the Program Manager, and CRM.
- 3.5.5.5 If the LACDMH Director/designee's determination modifies the initial or final consultant's recommendation to increase the apportionment for any licensee, that licensee will be so notified and will be afforded an opportunity to meet with the LACDMH Director/designee and to provide additional documents relevant to the apportionment decision, including explanations of systems issues to the LACDMH Director/designee within fifteen (15) business days of the licensee's receipt of the LACDMH Director/designee's modified apportionment recommendation. The LACDMH Director/designee will make a determination within fifteen (15) business days and inform CRM, the Program Manager and any licensee.
- 3.5.6 After all above dispute resolution processes have been completed, decisions by the LACDMH Director/designee will be final.
- 3.5.7 In the event the LACDMH Director/designee is privy to peer review information related to the case, a designee will be appointed to act for the LACDMH Director/designee in the dispute resolution as defined above. This does not prevent the LACDMH Director/designee from making the final determination of an agreed upon/non-disputed



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apportionment recommendation, as long as he or she makes no changes in the apportionment of any licensee.

- 3.5.8 Final decisions shall be provided to CRM who will forward the decisions to the TPA. The amount of settlement apportioned to a potential reportable licensee, including zero, will be reported to the appropriate licensing board in accordance with B&P Code § 801.01, et seq. The TPA shall prepare the appropriate documents to report said licensees to their respective boards. (Attachment 4) A copy of the report shall be forwarded to CRM and any licensees reported by the TPA as outlined in the reporting process algorithm. (Attachment 5)

AUTHORITY

1. California Business and Professions Code Sections 801.01, et seq.

ATTACHMENT (HYPERLINKED)

1. [Letter To Licensee - Notice of Meeting by the TPA](#)
2. [Letter To Licensee - Status of Reporting Decision-Economic Factor](#)
3. [Letter To Licensee - Notification of Apportionment Percentages](#)
4. [Letter To Licensee - Notification of Reporting to the Licensing Board by the TPA](#)
5. [Reporting Processes Algorithm](#)

RESPONSIBLE PARTY

LACDMH Office of the Medical Director